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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,978	11/25/2003	Alexander Bekker	PREDYN-44675	9035
26252 7590 02/11/2008 KELLY LOWRY & KELLEY, LLP 6320 CANOGA AVENUE SUITE 1650 WOODLAND HILLS, CA 91367				
EXAMINER				
HOGE, GARY CHAPMAN				
ART UNIT		PAPER NUMBER		
3611				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/722,978

Applicant(s)

BEKKER, ALEXANDER

Examiner

Gary C. Hoge

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 16-34, 37-49, 52-61 and 87-94 is/are pending in the application.
- 4a) Of the above claim(s) 24-27, 38-41 and 59-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 16-23, 28-34, 37, 42-49, 52-58 and 87-94 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's arguments presented in the Appeal Brief filed January 9, 2008 are persuasive and, therefore, the finality of the Office action mailed October 2, 2007 is withdrawn.

Election/Restrictions

2. Claims 24-27, 38-41 and 59-61 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 15, 2005.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 11, 16, 20, 28-31, 37, 42-45, 49, 52, 87-90 and 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036).

Pulliam discloses an identification tag system for attachment to the wrist of a human (the age of the wearer is irrelevant to the patentability of the tag), the system comprising an identification tag 1 having a long dimension and a short dimension, the tag including a pair of slots 3, 4 therethrough and means for receiving information 25 associated with the wearer; an elongated wristband 6 and related fastening means 8 for configuring and retaining the wristband in a closed loop shape of selected circumferential size wrapped about a wrist of the wearer, wherein the wristband is threaded through the slots; and wherein the identification tag is mounted onto the exterior of the wristband such that the long dimension of the tag extends

generally perpendicular to a long dimension of the wristband. However, the tag disclosed by Pulliam is not rectangular. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tag rectangular because it has been held that changes in the shape of an article are a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed article is significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Further, the tag and the wristband disclosed by Pulliam are made of thin metal. Krug teaches that it was known in the art to make a wristband and tag from an elastomeric material (column 2, lines 48-53, and column 3, lines 12-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the wristband and tag disclosed by Pulliam from an elastomeric material, as taught by Krug, as a matter of design choice, and in order to make them lighter, cheaper, and more flexible. Finally, the recitation that the closed loop is of a “small diameter” is considered to be met by Pulliam because no frame of reference is given in the claim, and the diameter of the wristband disclosed by Pulliam is small compared to many things.

Regarding claims 11 and 49, the elastomeric material from which the band and tag are made is inherently both relatively stiff and comparatively comfortable and compliant, especially given that the thing compared to which it is relatively stiff is not specified, and given that the thing to which it is comparatively comfortable and compliant is not specified.

Regarding claim 20, it would have been obvious to include a plurality of tags on the wristband disclosed by Pulliam because it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claims 31, 45 and 90, the information is presented in human-readable form.

Regarding claim 42, it is inherently understood that the wristband and tag disclosed by Pulliam are meant to be manufactured in quantities greater than one.

5. Claims 5-10, 32-34, 46-48 and 91-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036), as applied to claim 2, above, and further in view of Grose et al. (2002/0054940).

Pulliam discloses the invention substantially as claimed, as set forth above. However, the tag disclosed by Pulliam contains only human-readable information. Gross teaches that it was known in the art to provide an identification tag with both human-readable information and machine-readable information. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tag disclosed by Pulliam with both human-readable information and machine-readable information, as taught by Gorse, in order to allow the tag to be read by a machine.

Regarding claims 8, 9, 32, 33, 46, 47, 91 and 92, Grose discloses both a barcode and an RFID chip as the machine-readable information.

Regarding claims 10, 34, 48 and 93, Grose teaches the band may be of multiple ply construction (paragraph 0027) and that “the RFID tag 12 may be of any variety known to those skilled in the art, and is sized such that it may be embedded in the band 10” (paragraph [0039]).

6. Claims 17-19, 22, 23, 53 and 55-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036), as applied to claims 1 and 42, respectively, above, and further in view of Duncan (6,058,637).

Pulliam discloses the invention substantially as claimed, as set forth above. However, it is not known how the tags are formed. Duncan teaches that it was known in the art to form identification tags such that a plurality of them are detachably interconnected to each other, and to feed those tags through a printer (i.e., a processor station), to print information thereon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of the tags disclosed by Pulliam, and to attach them detachably together, as taught by Duncan, in order to enable efficient processing of multiple tags through a printer.

Regarding claims 19 and 56, a roll is a very long, very narrow sheet.

Regarding claims 23 and 58, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make some of the tags larger than the others because such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

7. Claims 21 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pulliam (1,517,456) in view of Krug (4,226,036), as applied to claims 20 and 42, respectively, above, and further in view of McDermott (3,965,589).

Pulliam discloses the invention substantially as claimed, as set forth above. However, the tags disclosed by Pulliam are not color coded. McDermott teaches that it was known in the art to color-code identification tags. See column 7, lines 10-24. It would have been obvious to one having ordinary skill in the art at the time the invention was made to color code the tags

disclosed by Pulliam, as taught by McDermott, in order to enable rapid visual identification of information conveyed by the various colors.

Response to Arguments

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary C. Hoge whose telephone number is (571) 272-6645. The examiner can normally be reached on 5-4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

Art Unit: 3611

like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary C. Hoge/

Primary Examiner, Art Unit 3611